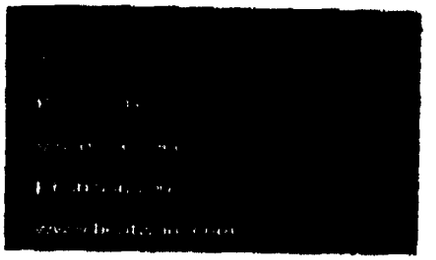

FAX

Renata B. Hosse
Antitrust Division
U.S. Department of Justice

To:	**From:** Tristan Fillmore
Fax: (202) 307-1454	**Pages:** (including this page)
Phone:	**Date:** 1-25-2002
Re:	**CC:**

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25 January, 2002

Renata B. Hesse
Antitrust Division
U.S. Department of Justice
Suite 1200
601 D Street NW
Washington, DC 20530-0001

To whom it may concern:

Pursuant to the Tunney Act, I am writing to express my opposition to the Proposed Settlement in the United States vs. Microsoft antitrust case.

The Proposed Settlement places much-needed restrictions on Microsoft's licensing practices by preventing Microsoft from retaliating against OEMs who ship Personal Computers that include both a Windows Operating System Product and a non-Microsoft Operating System. However, the Settlement completely ignores a critically important class of licenses: End-User License Agreements (EULAs).

Microsoft uses EULAs as a lever against competing Operating Systems with the ability to run Microsoft Windows programs. For example, the Microsoft Windows Media Encoder 7.1 Software Development Kit (SDK) EULA states in part:

> ...You may install and use the SOFTWARE on a single computer to design, develop, and test your software application products that utilize Microsoft Windows Media technology (your "Application") for any version or edition of Microsoft Windows 98, Microsoft Windows NT 4.0, Microsoft Windows 2000 operating system or any Microsoft operating system that is a successor to any of those operating systems (the "OS Platforms")...

Thus even if a competing Operating System has the technical ability to run Microsoft software, the user is prevented from doing so by the EULA because it is not a "sanctioned" Microsoft Operating System. Microsoft doesn't stop there, however. The same EULA prevents the software from even being *distributed* with an Open Source system:

> ...you shall not distribute the REDISTRIBUTABLE COMPONENT in conjunction with any Publicly Available Software. "Publicly Available Software" means each of (i) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g. Linux) or similar licensing or distribution models; and (ii) any software that requires as a condition of use, modification and/or distribution of such software that other software distributed with such software (aa) be disclosed or distributed in source code form; (bb) be licensed for the purpose of making derivative works; or (cc) be redistributable at no charge. Publicly Available Software includes, without limitation, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: GNU's General Public License (GPL) or

> Lesser/Library GPL (LGPL); The Artistic License (e.g., PERL); the Mozilla Public License; the Netscape Public License; the Sun Community Source License (SCSL); and the Sun Industry Standards License (SISL)...

Thus, through their EULAs Microsoft is able to effectively retard or even halt development of competing Open Source systems which might otherwise be competitors. However, they are still not satisfied with such restrictions. Microsoft goes further by placing limits on the end user's right to Free Speech. For example, the EULA included with Microsoft FrontPage 2002 (an application for creating web pages) states in part:

> ...You may not use the software in connection with any site that disparages Microsoft, MSN, MSNBC, Expedia, or their products or services...

Thus, Microsoft is not content to simply squelch competition, they insist on squelching Free Speech as well.

The Proposed Settlement is a good start, but until it limits the restrictions Microsoft is permitted to place in their EULAs, the Settlement will be insufficient to curb their anticompetitive behavior.

Regards,

Tristan Fillmore
Redwood City, CA